



# Texas Board of Chiropractic Examiners

**Thursday, February 23, 2023**

**BOARD MEETING: 9:00 A.M. – Final Adjournment at 11:58 A.M.**

George H.W. Bush Building  
1801 Congress Avenue, Suite 10.500  
Austin, Texas 78701

## BOARD MEETING MINUTES

The Texas Board of Chiropractic Examiners (Board) met on February 23, 2023, to consider and act as necessary on matters within the jurisdiction of the Board, which are listed on the agenda established for this meeting.

### 1. Call to Order and Roll Call:

**Action Taken:** Board President Dr. Mark Bronson called the meeting to order at 9:00 A.M. Board Secretary Dr. Scott Wofford called the roll.

#### Present Members:

Mark Bronson, D.C.  
Michael Henry, D.C.  
Scott Wofford, D.C.  
Nicholas Baucum, D.C.  
Debra White, D.C.  
Mindy Neal, D.C.  
Sarah Abraham, Ph.D., Public Member  
Joshua Hollub, Public Member

#### Absent Members:

Brandon Allen, Public Member

#### Board Staff Present:

Patrick Fortner, Executive Director  
Jennifer Hertsenberg, Director of Operations  
Christopher Burnett, General Counsel  
Sarah Matthews, Director of Licensing  
Joseph McLaughlin, Director of Enforcement  
Lisa Agarwal, Staff Services Officer  
Christopher Walling, Field Investigator  
Chris Beach, Field Investigator  
Scott Parker, Field Investigator  
Nikell Williams, Programmer Analyst



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Eight of the nine Board members were present and Dr. Bronson announced a quorum was established.

**2. Discussion and approval of the minutes for the Board meeting held on November 3, 2022:**

**Action Taken:** ABRAHAM MOVED and WOFFORD SECONDED to approve the minutes from the November 3, 2022 Board meeting. The Board **APPROVED** the motion unanimously.

**3. President's Report:**

First, Dr. Bronson discussed recent activities of the Board:

- Dr. Bronson discussed a public information request the Board received requesting Board correspondence to and from the Federation of Chiropractic Licensing Boards (FCLB).
- Dr. Bronson discussed a recent FCLB article that overviewed a lawsuit filed against the Colorado Board of Chiropractic Examiners in United States District Court and its relevance to the Texas Board.
- Dr. Bronson next discussed the agency's recent testimony to the Texas Legislature's Senate Finance and House Appropriations Committees.

Next, Dr. Bronson announced future events:

- On February 24-25, 2023, Dr. Bronson will attend the National Board of Chiropractic Examiners (NBCE) item writing workshop for the upcoming Part 4 Examination pilot study, in an effort to assist with the redevelopment of the Part 4 Examination.
- On April 26-30, the FCLB annual meeting will take place in Palm Beach, Florida. Dr. Bronson noted that the Board has nominated its delegates to the FCLB and NBCE and asked for the Board to vote for him as its delegate to the annual meeting.

**Action Taken:** HENRY MOVED and NEAL SECONDED to send Dr. Bronson as the Board's delegate to the meeting. The Board **APPROVED** the motion unanimously.

**Action Taken:** BRONSON MOVED and ABRAHAM SECONDED to make Dr. Wofford the Board's alternate delegate to the meeting. The Board **APPROVED** the motion unanimously.

- On May 5 and 6, 2023, the NBCE Part 2 Test Development Committee will meet and Dr. Bronson noted that the Board's district representative invited all licensed Board members to participate. He explained that they could nominate themselves if they wished.

**4. Board Committee Reports:**

**a. Rules Committee**

- Dr. Henry previewed the upcoming rulemaking action agenda items.

**b. Enforcement Committee**

- Dr. Baucum reported that the Enforcement Committee (EC) met February 15, 2023, to review cases.

**c. Education Standards Committee**

- Dr. Wofford reported that the committee had reviewed and fully approved twelve continuing education (CE) seminars, with another four receiving partial approval. Only one seminar was completely denied approval. He thanked Drs. Neal and Abraham and Ms. Hertsenberg for their service to the committee.

**d. Licensing Committee**

- Dr. Abraham noted that there was nothing unusual to report and that Ms. Matthews would report on the statistical changes in the licensure community.

**5. Executive Director and Staff Reports:**

**a. Executive Director**

- First, Mr. Fortner discussed the Board's testimony to the Texas Legislature's House Appropriations and Senate Finance Committees. He noted that, through its fees, the agency collects more revenue than it is authorized to spend. One member of the House committee suggested the agency discuss becoming self-funded with the Texas Comptroller's Office. Mr. Fortner stated that he would pursue consultations with the Comptroller's Office and keep the Board members apprised of his findings. He also noted that the agency is tracking all relevant bills and has been requested to provide two fiscal notes.
- Second, he provided an update on the agency licensing and enforcement database update. Staff should have full access to the updated database by June, 2023. In July, 2023, implementation of the new interactive components for the licensee community should begin.
- Last, Mr. Fortner recognized Mr. Parker for his outstanding long-term service over three separate tenures to the Board and congratulated him on his retirement.
- Mr. Fortner then recognized Mr. Burnett to provide a quick update on bills that have been filed. Mr. Burnett noted that a number of bills have been filed involving massage therapy and athletic training. The agency would be monitoring any such bills due to their broad captions potentially inviting amendments.

**b. Director of Operations**

- Ms. Hertsenberg discussed the financial report through February 2 for Fiscal Year 2023. She noted that the agency is on target with its revenues and expenditures and she did not anticipate any potential issues.

**c. Director of Licensing**

- Ms. Matthews presented the licensing report comparing the first quarters of Fiscal Year (FY) 2022 and FY 2023.

**d. Director of Enforcement**

- Mr. McLaughlin reported that 31 cases had been closed in the last reporting period with an average time required to close of 113 days.

**19. Closed Session:**

**Action Taken:** The Board entered a closed session pursuant to Texas Government Code §551.071 to receive legal counsel from Assistant Attorney General Karen L. Watkins concerning litigation from 9:28 A.M. until 9:59 A.M. All others present left the meeting room.

**Action Taken:** Dr. Bronson reconvened the open meeting at 10 A.M.

**6. Public Comments:**

**a. Scott Kelley, D.C., Chiropractic Society of Texas**

- Dr. Kelley spoke on 22 Texas Administrative Code (TAC) §72.3(c). He discussed his concern that either the Council on Chiropractic Education (CCE) or Council on Chiropractic Education International (CCEI) could lose their good standing with the U.S. Department of Education, which would leave the Board unable to accept education credits from any chiropractic school. He proposed the rule be amended to allow applicants to present proof of graduation from schools that are accredited by any accrediting body approved by the U.S. DoE. He also noted that there are currently seven other state chiropractic licensing jurisdictions with similar language in their rules.
- Dr. Henry stated that the Board would be willing to consider adding other accrediting agencies to the rule but they would need to be considered on a case by case basis. He also requested staff consider an amendment to the rule allowing for applicants to present proof of graduation from a school that *was* accredited with CCE or CCEI at the time of their graduation to address the potential issue Dr. Kelley presented.

**b. Vanessa Morales, D.C., Parker University**

- Dr. Morales was present to answer any questions from the Board about Parker University's accreditation process. She also urged adding additional accrediting bodies but requested the Board take care to ensure that none be added that would limit scope of practice. In response to a question from Dr. Bronson, she noted that she has heard of discussion to create accrediting bodies that would take more restrictive approaches to curriculum than CCE does.

**7. Discussion and action on requests to sit for the Texas Jurisprudence Examination pursuant to Texas Occupations Code §201.304(a)(2):**

**a. David Shaw**

Ms. Matthews presented the applicant's criminal history to the Board. The staff recommendation was to allow the applicant to take the Texas Jurisprudence Examination with no stipulations.

**Action Taken:** HENRY **MOVED** and HOLLUB **SECONDED** to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

**b. Christopher Leone**

Ms. Matthews presented the applicant's criminal and license disciplinary history to the Board. The staff recommendation was to allow the applicant to take the Texas Jurisprudence Examination with no stipulations.

**Action Taken:** HENRY **MOVED** and WOFFORD **SECONDED** to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

**c. Phillip Oller**

Ms. Matthews presented the applicant's criminal and licensing history to the Board. The staff recommendation was to deny the applicant's request to take the Texas Jurisprudence Examination and suggest that he reapply after satisfying the terms of his parole and release from supervision. The applicant was invited to address the Board. He discussed the events that led to his criminal history. He also discussed the rehabilitative components of his community supervision.

In response to Dr. Henry, he explained that his community supervision required random controlled substance testing every six months.

There was further discussion of skills testing before licensure. In response to Dr. Baucum, the applicant stated he wanted to begin by shadowing other doctors and would take continuing education before starting his own practice or joining a practice.

In response to Dr. White, the applicant discussed his support network.

**Action Taken:** HENRY **MOVED** and BAUCUM **SECONDED** to allow the applicant to take the Texas Jurisprudence Examination after passing the SPEC exam and then be issued a probationary license with controlled substance testing until April 19, 2027. The Board **APPROVED** the motion unanimously.

**d. Daxton Krugman**

Ms. Matthews presented the applicant's licensing history to the Board. The staff recommendation was to deny the applicant's request to take the Texas Jurisprudence Examination.

**Action Taken:** HENRY **MOVED** and WHITE **SECONDED** to accept the staff recommendation. The Board **APPROVED** the motion unanimously.

**8. Discussion and action on proposed final decision (PFD) orders pursuant to Texas Occupations Code §201.555 and 22 TAC §81.10:**

There were none for this meeting.

**9. Discussion and action on proposed cease and desist orders pursuant to Texas Occupations Code §201.6015 and Texas Government Code §2001.056:**

There were none for this meeting.

**10. Discussion and action on default orders pursuant to Texas Occupations Code §201.555, Texas Government Code §§2001.056(4) and 2001.058(d-1), and 22 TAC §81.6(b):**

There were none for this meeting.

**11. Discussion and action on proposed agreed orders pursuant to Texas Occupations Code §201.504(a)(1):**

**a. Seth Andrew Wagenblast, License No. 9995, TBCE Case No. 2019-273**

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

**b. Edgar Vivar Mendoza, License No. 12339, TBCE Case No. 2020-128**

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

**Action Taken:** BAUCUM **MOVED** and ABRAHAM **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

**c. Gene Allen Lott, License No. 6827, TBCE Case No. 2022-121**

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

**d. Andrew Wesley Oestreich, License No. 13846, TBCE Case No. 2022-131**

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

**Action Taken:** BAUCUM **MOVED** and ABARAHAM **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

**e. Kelly Mark Brown, License No. 4205, TBCE Case No. 2022-161**

Mr. McLaughlin presented the proposed agreed order. The staff recommendation was that the Board approve the agreed order.

**Action Taken:** ABRAHAM **MOVED** and WHITE **SECONDED** to approve the agreed order. The Board **APPROVED** the motion unanimously.

**f. Paul Emil Liechty, License No. 2765, TBCE Case No. 2022-165**

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

**g. Edward F. Group, III, License No. 8445, TBCE Case No. 2022-172**

Mr. McLaughlin announced that this item would need to be tabled until the next Board meeting.

**12. Discussion and action on required suspension or revocation of licenses for certain offenses pursuant to Texas Occupations Code §201.5065:**

There were none for this meeting.

**Action Taken:** At 10:45 A.M., Dr. Bronson allowed for a short break.

**Action Taken:** At 10:58 A.M., Dr. Bronson reconvened the meeting.

**13. Discussion of the Board's enforcement authority under Texas Occupations Code Chapter 201:**

Mr. Burnett introduced the discussion item. Staff had noticed a trend among complainants who are displeased with the findings in disciplinary orders from the Board. The specific issue appears to be that the Board is unable to make findings of injury causation in diligence/patient injury cases. Complainants often file complaints in conjunction with seeking monetary compensation for alleged injuries. The core of the issue is that the Board's expert review process does not allow for expert opinions regarding injury causation. The standard of care reviewers do not examine the complainants after an injury as would typically be necessary in a personal injury suit. They simply review patient records after the fact to try and determine if the respondent doctor met the generally accepted standard of care.

Dr. Henry, Dr. Bronson, and Mr. Burnett discussed potential changes to 22 TAC §80.5 that would clarify to complainants that the Board's enforcement process would not provide expert witness evidence usable in a civil trial. Mr. Burnett would draft some potential changes for the Board's consideration at the next Board meeting. Staff would also consider some changes to the Board's complaint form.

**14. Discussion and action on proposing the amendment of 22 TAC §73.2 (Failure to Meet Continuing Education Requirements):**

Mr. Burnett introduced the item by explaining that the proposed change would clarify that compliance with continuing education requirements is enforced by random audit. The staff recommendation was for the Board to propose the amendment as discussed.

**Action Taken:** HENRY MOVED and WOFFORD SECONDED to propose the amendment of 22 Texas Administrative Code §73.2 as discussed. The Board **APPROVED** the motion unanimously.

**15. Discussion and action on adopting the repeal and replacement of 22 TAC §73.3 (Requirements for Sponsors of Continuing Education Courses):**

Mr. Burnett introduced the item by explaining that this action would explicitly allow the Board to consider approving courses that are within or relate to the scope of practice. The staff recommendation was for the Board to adopt the repeal and replacement as proposed in the Texas Register.

**Action Taken:** NEAL MOVED and WHITE SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §73.3 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

**16. Discussion and action on adopting the repeal and replacement of 22 TAC §75.6 (Mandatory Notice to Public):**

Mr. Burnett explained this item was required in order to update the Board's address on the mandatory notice for licensees to display to the public. The staff recommendation was for the Board to adopt the repeal and replacement as proposed in the Texas Register.

**Action Taken:** WOFFORD MOVED and HENRY SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §75.6 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

**17. Discussion and action on adopting proposed new Board rule 22 TAC §75.11 (Appointment Cancellation or No-Show Fees):**

Mr. Burnett explained that this action arose out of a staff request to take rulemaking action clarifying that appointment cancellation or no-show fees cannot be billed to insurance. The staff recommendation was for the Board to adopt the proposed new rule as proposed in the Texas Register.

**Action Taken:** HENRY MOVED and WHITE SECONDED to adopt the proposed new rule 22 Texas Administrative Code §75.11 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

**18. Discussion and action on adopting the repeal and replacement of 22 TAC §76.3 (Fees for Providing Patient Records):**

Mr. Burnett introduced this item by explaining that the action would clarify that the fee for patient records was an administrative fee and not a billable fee. The staff recommendation was for the Board to adopt the repeal and replacement as proposed in the Texas Register.

**Action Taken:** ABRAHAM MOVED and BAUCUM SECONDED to adopt the repeal and replacement of 22 Texas Administrative Code §76.3 as published in the Texas Register. The Board **APPROVED** the motion unanimously.

**20. Closed Session:**

**Action Taken:** The Board entered a closed session pursuant to Texas Government Code §551.071 to receive an update from legal counsel relating to the Board's responsibilities under the Texas Public Information Act and Texas ethics laws from 11:36 A.M. until 11:55 A.M. All others present left the meeting room.



**Action Taken:** Dr. Bronson reconvened the open meeting at 11:56 A.M.

**21. Requests from Board members for future agenda items:**

There were none for this meeting.

**22. Adjournment:**

**Action Taken:** WOFFORD **MOVED** and BAUCUM **SECONDED** to adjourn the meeting at 11:58 A.M. The Board **APPROVED** the motion unanimously.

**STATEMENT:** I affirm that the above is a true and correct rendering of the minutes for the Texas Board of Chiropractic Examiners Board Meeting held on the above date. The minutes from the Board Meeting held on November 3, 2022, were **APPROVED** by the Texas Board of Chiropractic Examiners at its regularly scheduled meeting held on February 23, 2023.



February 29, 2023

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Patrick Fortner  
Executive Director  
Texas Board of Chiropractic Examiners

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Date